

VERMONT SENTENCING COMMISSION
Minutes of Meeting
January 27, 2020

The twelfth meeting of the Vermont Sentencing Commission commenced at approximately 1:40 p.m. at the Supreme Court in Montpelier. Present were Chair of the Commission Judge Thomas Zonay, Chief Judge Brian Gearson, Judge John Treadwell, Robin Joy, Karen Gennette, Martin LaLonde (on behalf of the chair of the House Committee on Judiciary), Matthew Valerio, Marshall Pahl, Elaine Boyce, Rebecca Turner, Rory Thibault, John Campbell, and David Scherr (designee for the Attorney General). Absent were Jordana Levine, Michael Schirling, Monica Weeber, and Richard Sears.

I. Approval of Minutes

The meeting opened with the Chair Thomas Zonay’s welcome and invitation to approve the minutes of the prior meeting on November 19, 2019.

Matt Valerio moved to approve the minutes; Elaine Boyce seconded. The motion passed unanimously on a voice vote. Karen Gennette abstained.

II. Report to Legislature / Testimony before Legislature

By the time of this meeting, the House Judiciary Committee had heard testimony from Judge Zonay, Marshall Pahl, and James Pepper regarding the Sentencing Commission’s report and recommendations. Martin LaLonde reviewed some of this testimony and discussed the two bills he has sponsored related to the recommendations—H.579 “An act relating to establishing a classification system for criminal property offenses” and H.580 “An act relating to establishing a classification system for criminal offenses.” In drafting H.580, Rep. LaLonde departed from the Sentencing Commission’s recommendations in two areas—all proposed fines in the bill are half of what the Sentencing Commission recommended, and the maximum penalty for Class B felonies dropped from the recommended 25 years to 20 years. The Senate Judiciary Committee will take the lead on a bill relating to the Sentencing Commission’s expungement and sealing recommendations.

III. Committee Reports

Committee A
Report and Discussion

There was no report from Committee A at this meeting.

Committee B
Report and Discussion

Committee B continues to monitor and support the work of the Justice Reinvestment II project.

Committee C

Report and Discussion

Judge Treadwell delivered the report for Committee C. The issue of crimes against persons classification had been discussed at the subcommittee's January meeting and needs at least one additional subcommittee meeting before a proposal will be submitted to the Commission.

The subcommittee also met with Department of Fish and Wildlife representatives to discuss decriminalization of certain fine-only misdemeanors. The Department raised concerns with the data being presented regarding the utilization of these offenses as well as the consequences of eliminating them. For instance, eliminating some of the fine-only offenses related to protected or endangered species may result in a loss of federal funds currently flowing into the state. The Department indicated that it could review its own utilization data and propose several offenses that could be decriminalized.

IV. Discussion Items

- a. Classification of additional crimes beyond sexual and property crimes.

Judge Treadwell noted that the crimes against persons classification proposal will be ready for the Commission soon. Committee C is also working on a classification proposal for Title 18 offenses. With respect to Title 18 offenses, Rep. LaLonde would like the Sentencing Commission to consider changes to the felony thresholds for drug possession crimes and a "possession with intent to distribute" crime that could potentially replace felony drug possession crimes.

- b. Decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses.

Committee C is looking at all fine-only offenses with a specific focus on the more archaic offenses or ones that have not been charged in recent history. The Committee will recommend either repealing certain of these offenses or decriminalizing them. Some conversation ensued regarding the impact of eliminating the possibility of jury trials for fish and wildlife offenses and traffic ticket appeals.

- c. Development of a classification scheme for all fines.

Subcommittee C has not proposed a fine scheme beyond the one contained in the classification recommendation, though it reminded the Commission that if H.580 were to pass, the transitional provision would automatically classify every offense into that universal fine structure.

- d. Reconciliation of categories of crimes within existing Vermont statutes, to include listed crimes and designated crimes.

Matt Valerio recounted some of the legislative history behind the multiple categories of offenses existing at various places in the Vermont statutes. He recommended consolidating these lists into a single list. Karen Gennette noted that CRG is currently working on a retrospective study regarding criminal pretrial risk assessments through the National Criminal Justice Reform Project. This work may help inform a discussion on reconciling these various categories of crimes. Judge Zonay formed a subcommittee to focus on this task, including: Matt Valerio, Karen Gennette, Robin Joy, Elaine Boyce, David Scherr, Marshall Pahl, and Rory Thibault.

V. New Business

James Pepper flagged a section of the Justice Reinvestment II bill that creates a new directive for the Sentencing Commission. The proposed legislation directs the Sentencing Commission to (1) analyze sentencing patterns across the State to identify where the use and length of incarceration may result in or exacerbate racial disparities; and (2) work with the Executive Director of Racial Equity and the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel in identifying the types of offenses for which there are racial and geographic disparities in sentencing and propose standardized sentencing guidance for those offenses.

Several members raised significant concerns regarding the directive to develop standardized sentencing guidance. Robin Joy discussed some of the difficulties in looking a historic data and/or criminal histories to attempt to discern why sentencing disparities occur. Rory Thibault noted that the socio-economic background of individual often significantly and detrimentally impacts the risk assessment scores they receive on the ORAS or YASI instruments. Matt Valerio suggested that the message to the Legislature with respect to this legislation should be to properly fund data collection prior to asking the Sentencing Commission to make recommendations based on that data.

VI. Scheduling next meeting

The next meeting is scheduled for Monday, March 9th at 1:30 PM at the Supreme Court.

VII. Adjourn

The meeting was adjourned at approximately 2:40 p.m.